DWQ Response to Comments received during Stakeholder Review of the Small MS4 General Permit

Storm Water Management Program Plan Description for Renewal Permittees

Comment (2): A request was made to allow 180 days from the effective date of the Permit to submit a revised SWMP document. 120 days is a relatively short timeframe to consider changes and make changes to a City's ordinance (Permit Part 4.2.2.3).

Response: A City may submit a SWMP that contains the draft ordinance and provide the status of its review, possible modifications, and subsequent approval. In terms of changes to a post-construction ordinance, many MS4s include design standards in master planning, standards and specifications, etc. documents which are easier to amend than the City's ordinances. Given that there are few changes to the permit, the Division feels that 120 days is a reasonable timeframe to submit a revised SWMP for a fully implemented program consistent with the current permit (renewal permittees).

Fact Sheet/Statement of Basis

Comment: The term "equipment" in Section 1.2 Permit Area and Eligibility could be reasonably interpreted to include permanent, fire-system infrastructure, such as fire suppression lines, pumps, sprinklers, and hydrants that require frequent flow-testing.

Response: It is not the intent of this Permit to restrict the testing of sprinkler systems provided there are no additives such as antifreeze solutions in the system.

Nitrogen and Phosphorus Reduction

Comment (5): Part 3.2.1.1 , Nutrient Reduction, states that the requirements of the section may be met through contribution to a collaborative program, and then gives details for the program. Do you know of any such programs that are (or will soon be) available?

The requirement to determine the targeted sources that are contributors to, or have the potential to contribute, nutrients to receiving waters feels like the expectation is to conduct studies or do water quality sampling and testing. Please clarify.

Response: The Permit has been changed to indicate that an example of a collaborative program could be the storm water coalitions that most MS4 Permittees already belong to. It is not the expectation of the Division for permittees to engage in water quality studies, sampling or testing at this time. Compliance with this requirement can be achieved by determining sources that are contributing to, or have the potential to contribute nitrogen and phosphorus to the waters receiving the MS4 discharge authorized under this Permit. Permittees must then prioritize these sources and distribute educational materials or equivalent outreach accordingly.

Discharges to Water Quality Impaired Waters

Comment (2): The link to the website for a list of impaired waterbodies appears to be broken http://www.waterquality.utah.gov/TMDL/index.htm..

Response: The correct link is:
http://www.deq.utah.gov/ProgramsServices/programs/water/wqmanagement/assessment/PreviousIR.htm

Comment: Strike "all" from 3.1.3 "all" necessary actions…

Response: The "Discharges to Water Quality Impaired Waters" section of the Permit is standard language that appears in all MS4 permits. No change in the permit language regarding this comment.

Illicit Discharge Detection and Elimination

Comment (2): Section 4.2.3.3.2, which relates to field inspections for priority areas for Illicit Discharge Detection and Elimination increases the frequency of these field inspections from averaging once every five years to once every year. This is a significant increase in labor to perform these inspections at such a drastic increase in frequency. Can this be reduced to perhaps once every three years? Alternately, I request that some flexibility in this requirement be allowed depending on history of illicit discharges in each area.

Response: The Division feels priority areas that meet the definition and clarification provided in the renewal permit need to be inspected on a more frequent basis in order to protect the waters of the State. In order for resources to be more readily available for these priority area inspections, follow-up and enforcement as needed, the Division has decreased the frequency of dry weather outfall inspections from once every two years to a minimum of once every five years.

Comment: (2): Section 4.2.3.3.3 requires dry weather inspection/screening outfalls once every two years, even if the outfalls are not "high-priority" or in "high-priority" areas. This requirement would involve a lot more work that would do little to improve water quality. We have been to our outfalls multiple times for inventory and screening; although we have found a few illicit discharges doing this, it is becoming less frequent as the discharges are eliminated.

This new requirement would result in a huge increase in workload for this activity, especially for Bountiful City which currently has 243 documented outfalls. Many of these outfalls are very difficult to access. I request that this requirement be changed to require screening/inspecting ten percent per year considering that the current permit requires screening 20% of "high-priority" areas each year. Or, can you at least greatly reduce the required frequency for screening these outfalls?

Our illicit discharges have been discovered through routine maintenance and other sources. I don't think increasing the frequency of inspection will benefit water quality.

Response: The Division has changed the dry weather screening frequency requirement in Permit Part 4.2.3.3.3. in order to provide Permittees more resources to focus on the priority areas of their jurisdiction.

Comment (3): I have concern of having the responsibility of identifying and notifying the Division of all dischargers within my boundaries that need separate permits. Does this mean we should notify the state for every construction site in our jurisdiction?

We feel that the requirement to notify the Division of discharges to the MS4 should be more emphasized. Being sure that all facilities are permitted can be a great reduction in pollution to MS4s. The MS4 should have a list of all permitted industrial facilities within their MS4. They should also keep of list of which ones are not permitted and review it on an annual basis. These lists should be submitted to the state on an annual basis. Also an educational component for industrial facilities would be beneficial to have added to this permit. This inventory and education will stop illicit discharges due to the MS4s lack of education provided to industrial facilities.

Response: Section 4.2.3.3.2 requires that the Permittee notify the Division of dischargers to the MS4 that need or have failed to obtain a separate UPDES Permit such as an Industrial Storm Water Permit, or Construction Dewatering Permit. It is the intent of this Permit requirement for the regulated MS4 to notify DWQ when they become aware of an entity that may be discharging pollutants to the regulated MS4 without the appropriate UPDES Permit. Both the Division and the regulated MS4s should be working together to keep pollutants out of Waters of the State. It is the regulated MS4s role to oversight

construction activities so therefore there is no need to notify the Division of the sites within their jurisdiction that need a construction storm water permit as each MS4 has the responsibility of assuring that construction sites have obtained the necessary storm water permits. However, there are sources of pollutants that the Division regulates for which this MS4 General Permit is requiring Division notification. An example of when such notification would be appropriate includes dewatering operations that are discharging to the MS4 and industrial facilities which have failed to obtain a storm water permit. The Permit requirement has been modified to clarify the intent of the provision.

There already exists an educational component in the Public Education and Outreach minimum control measure for institutions, industrial and commercial facilities. The Permit has four target audiences for public education and outreach on storm water impacts. These include (1) residents, (2) businesses, institutions, and commercial facilities, (3) developers and contractors (construction), and (4) MS4 industrial facilities.

Comment: In parts 4.2.3.12 (IDDE) and 4.2.6.10 (Housekeeping for O & M) are now both requiring training that must be done annually. We are presently alternating these topics year by year, will that be enough or do we need to provide both trainings year in and year out?

Response: You will need to ensure that all staff, including contracted staff, receives annual training in the IDDE, Construction, Long-Term Storm Water Management, and P2/Good Housekeeping minimum control measures of the Permit every year at a minimum.

Construction Site Storm Water Runoff Control

Comment: What is meant by a larger common plan of development or "sale"?

Response: A "larger common plan of development or sale" is a contiguous area where multiple separate and distinct construction activities may be taking place at different times on different schedules under one plan. For example, if a developer buys a 20-acre lot and builds roads, installs pipes, and runs electricity with the intention of constructing homes or other structures sometime in the future, this would be considered a larger common plan of development or sale. If the land is parceled off or sold, and construction occurs on plots that are less than one acre by separate, independent builders, this activity still would be subject to storm water permitting requirements if the smaller plots were included on the original site plan. The larger common plan of development or sale also applies to other types of land development such as industrial parks or well fields. A permit is required if 1 or more acres of land will be disturbed, regardless of the size of any of the individually-owned or developed sites.

Comment: Section 4.2.4.4.5 would require the MS4 to provide and publicize a hotline for the public to report on violations from construction sites. I suggest changing the word "violations," perhaps to "issues" or "problems" because the public may not know what is or is not a violation. Furthermore, the example given of tracking from a construction site may or may not be a violation, depending on the situation at the site.

Response: Agreed. Wording has been changed to "storm water related issues."

Comment: Permit Part 4.2.4.5 has added language that requires the Permittee to ensure annual training of all staff and immediate training of new hires. I'm not sure who this part requires us to train as all of our construction is handled by 3rd party contractors and we don't train their employees for them, they are responsible for their own training as per the general construction permit they get when they file their NOI.

Response: The training requirement is for internal MS4 staff responsible for implementation of the SWPPP and Permit requirements. The new requirement for the "Permittee to ensure that all new hires are trained immediately upon hire" is intended to ensure that new employees involved with MS4 storm

water management are trained to perform their job upon hire and before commencing storm water related duties, and not during the next scheduled, potentially annual, training session.

Long-term Storm Water Management in New Development and Redevelopment (Post-Construction Storm Water Management)

Comment: Section 4.2.5.3.2 requires that we have a process to evaluate every project in the city on the use of LID as a long term BMP. If LID cannot be utilized, then a justification must be made as to why on a case-by-case basis. We have a number of LID developments that are typically considered with site plan developments on larger properties. Our typical subdivision developments follow our design standards. As infill subdivisions match in with existing subdivisions surrounding them, the ability to install LID's become limited. If this is an acceptable rational, then this may not be much of a concern.

Response: An LID approach must be considered for all new and redevelopment projects greater than an acre or part of a common plan of development. If typical subdivision developments follow City design standards, the standards must then include LID design approaches. If an LID approach will not work for an infill subdivision, the reasons (i.e. high groundwater, space constraints, soil type, etc.) must be described as well as the rational for the selection of alternative design criteria.

Comment: There needs to be a balance between Permit Part 4.2.5.3.2 and 4.2.5.3.4. The law only allows for 2,500 gallons max to be stored on-site, and this requires the facility to be registered. The 2,500 gallon max is independent of the size of the facility.

Response: Agreed, current rainwater harvesting regulations have a maximum total allowed storage capacity with registration of no more than 2,500 gallons independent of the size of the parcel (http://waterrights.utah.gov/forms/rainwater.asp). However, rainwater harvesting is only one of the strategies for LID described in Permit Part 4.2.5.3.2. The LID approach includes BMPs that infiltrate, evapotranspire and harvest and use storm water. Based on site conditions, one or a combination of these methods should be employed to meet the requirements of Permit Part 4.2.5.3.4.

Comment (4): About Section 4.2.5.3.4: The requirement for designing long term controls based on a specific design storm (2 year, 24 hour) is inappropriate. This appears to be an arbitrary standard. The existing permit required the MS4 to develop hydrologic methods and sizing requirements for designing long term controls; this contradicts what was already required and developed for the current permit. Furthermore, requiring controls sized for that particular storm oversteps good engineering judgment for most cases where a different design storm or other design requirements are suitable.

In the previous permit the 2-year, 24-hour storm event was given as an example. In this permit it is required. Along the Wasatch Front the 2-year 24-hour event amounts to 1.35-1.4 inches of rainfall. On a quarter acre lot 1.35 inches of rainfall equates to 9,166 gallons of storage, almost 4 times the amount allowed by law if retained or infiltrated. Retaining the mentioned storm event would be holding back twice as much water as the pre-development amount in some areas while only a fraction of what it should be to match pre-development conditions in other areas.

4.2.5.3.4. It would be not feasible to retain, detain or infiltrate the 2-year, 24-hour storm event for nearly every project. If the objective is to infiltrate then I would recommend using a different form of measurement. Or if the intent is to mimic pre-development conditions it would be better to spell it out using a different method.

Setting a design standard of a "2-year, 24 hour storm event" is not practical. We should not have an absolute standard for this. This standard is way restrictive and is way more than predevelopment conditions. A better option would be to have the flexibility to match site predevelopment conditions or follow the federal guideline of the 95 percentile.

Response: EPA Region 8 determined that the post construction management requirements of Permit Part 4.2.5 are insufficient to meet current expectations of the Maximum Extent Practicable standard for MS4s and that the State of Utah must include a specific design standard for post construction in its Permit upon reissuance. The 2-year, 24-hour storm event was suggested as a standard for new development. However, upon further consideration and review of stakeholder comments, the Division acknowledges that specifying this standard may not be appropriate for a state as hydrologically diverse as Utah. The intent of the Permit is for the hydrology associated with new development to mirror the pre-development hydrology of the previously undeveloped site or to improve the hydrology of a redeveloped site and reduce the discharge of storm water associated with development.

The Permit standard will be changed to require design, construction, and maintenance of storm water management practices that manage rainfall on-site, and prevent the off-site discharge of the precipitation from all rainfall events less than or equal to the 90th percentile rainfall event. This objective must be accomplished by the use of practices that infiltrate, evapotranspire and/or harvest and reuse rainwater. The 90th percentile rainfall event is the event whose precipitation total is greater than or equal to 90 percent of all storm events over a given period of record. This standard accounts for small, frequently occurring storms which typically are infiltrated in a pre-development condition and account for a large portion of the total annual precipitation volume.

Comment: 4.2.5.5.2. In using the term "surveyed" it may be interpreted that a surveyor with survey equipment is required to complete this task. If a visual inspection is what is intended then I would suggest making that clear.

Response: The intent of this section is for the MS4 to ensure the long term post construction BMPs were constructed as designed. The Permit language has been changed to reflect this requirement. This requirement may be achieved through obtaining engineer-stamped as-built drawings, surveying, inspection, testing of infiltration rate or other methods as needed to verify construction.

Pollution Prevention & Good Housekeeping for Municipal Operations

Comment: 4.2.6.5. When I first read the last sentence "The following are typical "high priority" facilities I misunderstood it as implying that all the facilities listed after that were to be "high priority." Is it merely suggesting that the following facilities are possibly high priority or is it giving the baseline of the high priority list?

Response: Based on the assessment required in Part 4.2.6.2., the Permittee must identify as "high-priority" those facilities or operations that have a high potential to generate storm water pollutants. The Permit has been reorganized to provide further clarification on the requirements to assess the written inventory of Permittee-owned or operated facilities, operations and storm water controls to determine which are "high priority" facilities, the inspection of "high priority" facilities, and the overall development and implementation of SOPs for all facilities and municipal operations.

Comment: Permit Part 4.2.6.5.6 describes the need to discharge liquid from street sweepings and catch basin cleaning to the sewer. Then dry out the material on an impervious surface before disposing of it. As I interpret this, I need to construct a drying bed with a concrete or asphalt floor. Although I had already taken a proactive position to plan for this construction this year, we don't have money to construct the entire drying bed, so we are going to phase it over a couple of years until we can pay for it. I also did not anticipate that this would be piped to the sewer. I question whether NDSD would allow this due to their standards. Since drying beds will discharge rainwater from storms, I suspect that the sewer district would not like the additional flows and high volume of water. I had planned a grease trap/sediment box that would separate the sediments and floatables from the storm water prior to discharge. The box would be cleaned on an annual basis using the same schedule for high priority inspection areas.

Response: Under no circumstances can decant from a drying bed or area discharge to the MS4 or infiltrate into the ground. The permit indicates that the materials removed from the MS4 shall be dewatered in a contained, impervious area and discharged (or disposed) to the local sanitary sewer (with approval from local authorities) where feasible. The solid material can then be stored and disposed of properly to avoid discharge to Waters of the State during a storm event. In the example given in this comment, if a local treatment plant cannot accept comingled storm water and decant waste water, the area could be covered. Many cities take the waste directly to the treatment plant and off load the material onto the drying beds located at the plant which would also solve the scenario described above. Proper means of decanting the waste and disposing of the solids will have to be accomplished temporarily until a permanent solution as described can be fully implemented.

Comment: Section 4.3.5 is a new requirement for training those with whom the MS4 shares responsibility. As Bountiful City works with the other MS4s in Davis County through the Coalition, how will this requirement affect the coalition? Also, Bountiful City works with Davis County Health Dept. for on IDDE program requirements. Is this requiring that we train Health Dept. Staff? Because the entities are bound by the terms of the agreement, can the requirement be changed to allow for reviewing terms of agreement instead of training?

4.3.5. Where County Coalitions are concerned with sharing responsibilities this could be a repetitive and overlapping endeavor from one city conducting training of another city. Could these shared responsibilities be identified and listed with the responsible party?

The wording of Permit Part 4.3.5. requires Permittees to train outside entities such as local health departments. There are cases where the MS4 hires someone to do something because that someone knows more about how to do that activity than the MS4 does.

Response: The need for a responsible entity to understand the regulated MS4's permit requirement and associated SOPs has been emphasized in this permit. Nearly all regulated MS4s participate in a Storm Water Coalition for the purpose of pooling resources to meet the public education and outreach requirements of the MS4 General Permit. The training component of Permit Part 4.3.5 more directly applies to when an MS4 relies partly or wholly on an outside entity to meet permit requirements. For example, this could be a contractor performing MS4 maintenance, or construction site inspections, or a local health department responding to complaints of illicit discharges. In instances such as these, it is the regulated MS4's responsibility to ensure that the responsible entity understands the MS4 permit requirements, has received the appropriate training on the requirements as applicable and that the responsible entity is meeting these requirements. In terms of the specific example of a written agreement established with a local health department, the MS4 would address all of these factors when establishing the written agreement and continually ensure that the both parties are upholding their defined roles. If an MS4 makes any changes to an SOP that would affect the responsible entity's role, the MS4 would need to educate, train, review, etc. these changes with the responsible entity as needed.